

PROTECTED DOCUMENTS

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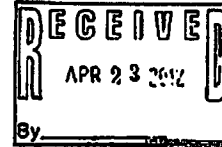
Bohyer, Erickson, Beaudette & Tranel, P.C.

Attorneys at Law

Jesse Beaudette  
John E. Bohyer  
Erin M. Erickson  
Nathan A. Fluter  
Wilton H. Strickland  
Paul N. Tranel

\*Also admitted in Florida

April 20, 2012



Ms. Annie Louise King  
720 Revolution Ave.  
Billings, MT 59105-1518

Re: Insured Timothy King, deceased  
Claim No. 0372130260105015  
Date of Loss 8/27/11  
BEBT File No. 6730

Dear Ms. King:

I have been retained by GEICO Indemnity Company ("GEICO") with respect to the claim that you have made on the policy due to the tragic death of your husband, Timothy King. Ms. Janae Estill of GEICO has been corresponding with you and she asked that I respond to your letter of March 15, 2011, so that we can get the matter resolved to your satisfaction.

I have been provided with the correspondence that you and Ms. Estill at GEICO have exchanged. It appears that there is some confusion as to what type of release document, if any, must be signed by you as Personal Representative of the Estate of Timothy King. In that regard, thank you for providing your Letters of Appointment as Personal Representative. Initially, GEICO apparently indicated that it needed a full release of any and all claims that you might make as a result of Mr. King's death. You responded that you would not sign a release but would execute an "Acknowledgment and Receipt of Underinsured Motorist Payment."

To be clear, you are not being asked to release any and all claims that you as an individual may have under the underinsured motorist coverage of the GEICO policy. The only release that needs to be executed by you is a release for the wrongful death and survival claims that could be advanced by the Personal Representative. This release is in return for the \$100,000 stacked "per person" limit available under the GEICO policy. There is a \$200,000 "per accident" limit under the policy as well. You, individually, are entitled to reserve your own bodily injury claim and to assert that claim if you believe it exists.

If my letter does not make sense, I ask that you please consult with your own counsel on the matter. In this regard, there are two cases that are pertinent to the

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fax 406 549 2253

283 W Front, Ste. 201  
PO Box 7729  
Missoula, MT 59807

EXHIBIT

501

1:12-CV-92-RWA

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Ms. Annie Louise King  
April 20, 2012  
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release and payment issue. *State Farm Mut. Auto Ins. Co v. Bowen*, 34 Mont. Fed. Rptr 1 (D. Mont. 2005, Judge Cebull); 247 Fed. Appx. 901 (9th Cir. 2007); and *Adair v. Safeco Ins. Co. Of Illinois*, CV-09-31-BU-RKS (D. Mont. 8/31/10, Judge Strong) (Order *In Limine*). I have attached copies of both of these decisions so that you may review and discuss them with your lawyer as needed. In short, the two decisions allow the recovery of one "per person" limit—here \$100,000—under the underinsured motorist coverage of the policy for the wrongful death and survival claim. As well, because the \$100,000 is full performance with respect to those claims, the insurer is entitled to a release for those claims as discussed in the *Adair* opinion.

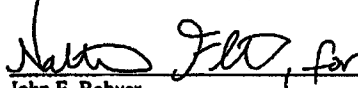
GEICO is not asking that you release any *individual* claim for bodily injury that you believe you may have under the insurance policy in question.

I have enclosed the \$100,000 settlement check from GEICO to be made payable to Annie Louise King, as Personal Representative of the Estate of Timothy King. As well, I enclose a copy of the release that will need to be signed solely with respect to the wrongful death and survival claims that are advanced due to the death of Mr. King. Within the release, you will note that I have included language whereby "Annie Louise Holmes King specifically reserves unto herself any other claim for own bodily injury, and such claim is not released under the terms of this document." After signing and returning the release to this office, you are free to cash the settlement check. I am enclosing a self-addressed, stamped envelope for your convenience.

If you wish, please feel free to consult with your own legal counsel. In this regard, my office checked with Todd Gunderson, the attorney who is handling the probate matter, to see if he is representing you on this insurance issue. He indicated that he is *not* handling this matter for you, and does not know who is handling this matter for you, if anyone. While I am happy to discuss the matter with you, I think it best that you discuss the matter with your own counsel if you have questions.

Sincerely,

BOHYER, ERICKSON,  
BEAUDETTE & TRANEL, P.C.

  
John E. Bohyer

JEB/dlp  
Enclosure  
cc. Janaé Estill  
GEICO INDEMNITY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISIONSTATE FARM MUTUAL AUTOMOBILE )  
INSURANCE COMPANY, )

CV-04-63-BU-RPC

Plaintiff, )

vs. )

ORDER

CAROLINE BOWEN, Individually and as )  
the Personal Representative of the Estate )  
of MICHAEL BOWEN, )

Defendant. )

FACTS

On November 7, 2003, Michael Bowen and his wife Caroline Bowen were involved in a head-on automobile collision on US 191. As a result of injuries sustained in the collision, Michael Bowen died. Caroline suffered bodily injuries including abrasions to her face, a broken right arm, glass imbedded in her forehead, chest contusions, and post-traumatic stress disorder.

At the time of the accident, State Farm had issued four automobile policies to Michael and Caroline Bowen, each of which provided underinsured motorist coverage with policy limits of \$100,000 for "Each Person," and \$300,000 for "Each Accident." Under the terms of the policy, State Farm agreed to pay "damages for bodily injury an insured is legally entitled to collect from the owner or the driver of an underinsured motor vehicle. The bodily injury must be sustained by an insured and caused by an accident arising out of the operation, maintenance or use of an underinsured motor vehicle." The policy contained the following "limits of liability":

Under "Each Person" is the amount of all damages due to bodily injury to one person. "Bodily injury to one person" includes all injury and damages to other persons, including emotional distress, sustained by such other persons who do not sustain bodily injury. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person," for all damages due to bodily injury to two or more persons in the same accident.

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Exhibit 501, Page 3

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Caroline Bowen, as personal representative of the Estate of Michael Bowen, requested State Farm pay \$800,000 stacked "Each Accident" limits of underinsured coverage under the Bowens' policies for the wrongful death and survival claims. State Farm stacked the "Each Person" limits and paid \$400,000 for the wrongful death and survival claims. State Farm is separately adjusting Caroline Bowen's own bodily injury and emotional distress claim.

On September 8, 2004, State Farm filed a declaratory judgment action in this Court seeking a judicial determination of whether the "Each Person" limit contained in the Bowens' policies applies when there are survival and wrongful death claims arising out of the injury and death of a single insured. On October 7, 2004, Caroline Bowen answered and filed a counterclaim. The parties have now filed cross-motions for summary judgment.

**LEGAL STANDARD**

Summary judgment is appropriate if no material issues of fact are in dispute and a party is entitled to summary judgment as a matter of law. Rule 56(c), F.R.Civ.P. The fact that cross-motions for summary judgment are filed does not mean that summary judgment must necessarily be granted in favor of one party or the other. *Hall v. Allstate Ins. Co.*, 29 MFR 1 (2001). Instead, the Court must consider each motion separately, under the standards of Rule 56, to determine whether summary judgment is properly granted. *Id.*

**ANALYSIS**

The parties are in agreement that the issue presented to the Court for decision is whether a survival and wrongful death claim fall under the "Each Person" or "Each Accident" limits of liability.

Judge Shanstrom has accurately and succinctly summarized the law in Montana on the issue of the interpretation of insurance contracts previously, stating:

The interpretation of an insurance question is a question of law. The language of the insurance policy governs its interpretation if it is clear and explicit. If ambiguities

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exist, they are construed against the insurer. Similarly, exclusions from coverage will be narrowly and strictly construed because they are contrary to the fundamental protective purpose of an insurance policy.

*Taylor v. State Farm*, 27 M.F.R. 417, 420 (2000) (citations omitted.)

The issue of whether a survival and wrongful death claim are subject to the "Each Person" limit of liability has not previously been addressed by a Montana court. Thus, the Court must attempt to discern what the Montana courts would do if faced with this issue. As a starting point in its analysis, the Court turns to previous interpretations of the "Each Person" clause by the Montana Supreme Court.

A. PREVIOUS INTERPRETATION OF "EACH PERSON" CLAUSE

Each party relies on a different Montana case for its position regarding the interpretation of wrongful death and survival claims under the State Farm policy. Specifically, State Farm relies on *Bain v. Gleason*, 223 Mont. 442, 726 P.2d 1153 (1986). In *Bain*, a husband and wife brought an action for injuries sustained by the wife in a vehicle collision. The husband, who was not present at the scene of the collision, brought a separate claim for loss of consortium. The insurance company contended that the consortium claim was included within the policy's "each person" limits of liability. The insured, while acknowledging that his loss of consortium claim was derivative from his wife's injuries, contended that the action for consortium loss was a "separate and independent cause of action which is the property of the impaired spouse," noting that the injuries to the wife are different than those suffered by the husband such that "the cause of action for loss of consortium in favor of the deprived spouse is an independent action which stands on its own footing." *Bain*, 223 Mont. at 448, 726 P.2d at 1156. The Montana Supreme Court disagreed, finding that even though the husband's loss of consortium claim was a distinct and independent cause of action, it was nevertheless subject to the "Each Person" limits under the policy because it stemmed from the same bodily injury sustained by one person in one

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accident. *Id.*

Plaintiff Bowen, on the other hand, relies on the Montana Supreme Court's decision in *Treichel v. State Farm*, 280 Mont. 443, 930 P.2d 661 (1997) for her position that the "Each Person" limitation does not apply to her wrongful death and survival claims. In *Treichel*, a husband and wife were riding bicycles when the husband was struck by an automobile, and subsequently died from injuries sustained in the collision. The driver of the automobile was insured by State Farm under a policy which limited coverage to \$25,000 for "Each Person" and \$50,000 for "Each Accident." The wife, Carolyn Treichel, submitted a claim to State Farm for \$50,000, contending that her emotional distress claim was separate and distinct from her husband's claim. State Farm paid \$25,000 under the "Each Person" limits of liability, contending that Carolyn's emotional distress claim was derivative of her husband's claim. Specifically, before the Montana Supreme Court, State Farm argued that the "Each Person" limits applied because "Carolyn's emotional distress resulted from [her husband's] injury," and further relied on the *Bain* decision.

The Montana Supreme Court disagreed with State Farm, and distinguished *Bain* as follows:

In *Bain*, we said that "Each Person" limitation refers to all damages imposed by law by whomever suffered resulting from one bodily injury and one accident and that the "Each Accident" limitation only applies when two or more persons suffer bodily injury in the same accident.

Unlike Carolyn, the plaintiff in *Bain* was not at the scene of the accident and did not witness the injuries to his spouse. As the District Court pointed out in the case before us "[i]t is this personal, on the scene, direct physical and emotional impact which distinguishes emotional distress claims under *Sacco* from loss of consortium claims." Carolyn was a separate person who received an independent and direct injury at the accident scene.

*Treichel*, 280 Mont. at 449, 930 P.2d at 665.

Clearly, both the *Bain* and *Treichel* decisions support State Farm and Caroline Bowen's

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respective positions to a certain degree. The issue then becomes whether wrongful death and survival claims are more like the loss of consortium claim encountered in *Bain* or the emotional distress claim in *Treichel*. In considering this issue, the Court looks to the treatment of this issue by other courts, as well as the place of wrongful death and survival claims in Montana jurisprudence.

**B. TREATMENT OF WRONGFUL DEATH AND SURVIVAL CLAIMS BY OTHER COURTS.**

State Farm points to several cases from other jurisdictions which stand for the proposition that, under insurance policy limitations like those found here, the "each person" limit of liability applies to a wrongful death and survival action. For example, the New Jersey Supreme Court's recent case of *Vassiliu v. Daimler Chrysler Corp.*, 839 A.2d 869 (N.J. 2004) is very similar to the facts of this case. There, an automobile accident victim's surviving spouse brought wrongful death and survival actions against the driver. After judgment was entered in favor of the spouse on her claims, she filed a declaratory judgment action against her insurer for underinsurance benefits. Like Bowen does here, the insured in *Vassiliu* argued that the survival and wrongful death actions each qualified for separate per person coverage. The trial court agreed with the insured's position, reasoning that "wrongful death actions and survival actions are treated as separate and discrete actions affording different damages remedies to different parties, even though they may arise from the identical occurrence- the death of a family member from injuries sustained in a vehicular accident." 839 A.2d 866.

The New Jersey Supreme Court agreed with the district court that the wrongful death and survivor actions were legally distinct, but nevertheless concluded that "because plaintiff's survival and wrongful death actions are derivative of and dependent on the decedent's injuries, including his unfortunate death, those actions are subject to a single 'per person' limit in the liability policy." *Id.* at 868.

The result in *Vassiliu*, as far as this Court can tell, mirrors the result reached by every

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other court which has encountered the issue. See *McKinney v. Allstate Ins. Co.*, 722 N.E.2d 1125 (Ill. 1999) ("per person" limit of liability clause "clearly limited" all claims arising out of the decedent's death to a single per person limit; *Graco Gen. Ins. Co. v. Arnold*, 730 So.2d 782 (Fla. Dist. Ct. App. 1999) ("each person" limit of liability clause not ambiguous and limited wrongful death and survival claims); *Cradoct v. Employers Cas. Co.*, 733 S.W.2d 301 (Tex. App. 1987) ("per person" limit applied to person injured in accident, not other persons suffering loss because of that injury). Thus, the precedence from other jurisdictions weighs heavily in favor of State Farm's position.

C. STATUS OF WRONGFUL DEATH AND SURVIVAL CLAIMS IN MONTANA.

In *Swanson v. Champton Int'l Corp.*, 197 Mont. 509, 646 P.2d 1166 (1982), the Montana Supreme Court discussed the treatment of both wrongful death and survival claims under Montana law. As discussed in *Swanson*, a survival action is created by statute<sup>1</sup> and may be pursued against the responsible party by his personal representative. 197 Mont. at 514, 646 P.2d at 1169. The source of the damages recoverable in a survival action are personal to the decedent, and therefore belong to the decedent's estate. They do not include any damages suffered by the widow, children or heirs. *Id.*

A wrongful death action, likewise, is an independent action created by statute.<sup>2</sup>

Generally, the proof of damages in a wrongful death cause of action will include loss of consortium by a spouse, loss of comfort and society of the decedent suffered by the surviving heirs, and the reasonable value of the contributions in money the decedent would have been expected to make. *Id.*, 197 Mont. at 517, 646 P.2d at 1170. "The source of the damages recoverable in a wrongful death action is personal to the survivors of the decedent. The damages

<sup>1</sup> Mont. Code Ann. § 27-1-501.

<sup>2</sup> Mont. Code Ann. § 27-1-513.



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are not those of the decedent, but of the heirs by reason of his death." *Id.*; see also *Payne v. Eighth Judicial District Court*, 313 Mont. 118, ¶ 8, 60 P.3d 469, ¶ 8 (2002) (wrongful death claim compensates the heirs for the harm that they personally suffered as a result of the decedent's death).

**D. BOWEN'S WRONGFUL DEATH/SURVIVAL CLAIMS ARE DISTINGUISHABLE FROM AN EMOTIONAL DISTRESS CLAIM.**

After surveying Montana case law on the subject, it becomes apparent that a wrongful death action is distinguishable from an emotional distress action. As stated by Judge Molloy:

To prove the [infliction of emotional distress] claim the emotional distress must be "serious" or "severe" as those terms are defined by the Restatement (Second) of Torts § 46, comment j. The proof required is far different from the proof that must be shown to recover in a wrongful death case, or from the proof required to recover for mental or physical suffering in a personal injury case. The paramount issue can be characterized by reference to duty.

*Nelson v. Hawkins*, 24 M.F.R. 446, 45 F. Supp.2d 1015, 1021 (D.Mont. 1999) (internal citations omitted).

The distinction made by Judge Molloy is critical to the Court's decision in this case. Ms. Bowen makes much of the fact that she was present at the scene of the accident and witnessed her husband's injuries. Clearly, Ms. Bowen has a very legitimate emotional distress tort claim under these facts. However, these facts are immaterial to Ms. Bowen's wrongful death claim. In an infliction of emotional distress claim, the plaintiff must establish that the emotional distress was a "reasonably foreseeable consequence" of the defendant's act. Under an emotional distress claim, then, the duty runs directly to the party suffering the distress. In a wrongful death action, by contrast, the duty does not run directly from the tortfeasor to the distressed party, but rather is a consequence of the duty owed to the decedent. The Court finds that Ms. Bowen's reliance on *Treichel*, and other emotional distress cases discussing the application of the "Each Person" liability limitation, is misplaced. A wrongful death action is simply not analogous to an infliction of emotional distress claim.

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E. THE MONTANA SUPREME COURT'S DECISION IN *BAIN* DICTATES THAT THE "EACH PERSON" LIMITATION APPLY TO BOWEN'S WRONGFUL DEATH/SURVIVAL CLAIMS.

Having distinguished Bowen's claims from the emotional distress claims in *Tretchel*, the Court is left with the *Bain* decision as guidance on this issue. As noted above, in *Bain*, the Montana Supreme Court held that a loss of consortium claim was limited by the "Each Person" clause in the subject policy. Under Montana law, the damages available in a wrongful death action will include "loss of consortium" by the spouse. *Swanson, supra*.

The Court concludes that extending the "Each Person" limitation from a loss of consortium claim to a wrongful death claim is a natural and inevitable result under *Bain*. This conclusion is further bolstered by the fact that every other court faced with the issue before this Court has concluded that the "Each Person" limitation applies to a wrongful death claim. The Court finds no ambiguity in the policy, and holds that State Farm was correct in applying the "Each Person" limit to Ms. Bowen's wrongful death and survivorship claims. Accordingly, Plaintiff's motion for summary judgment (*Docket No. 10*) is GRANTED and Defendant's motion for summary judgment (*Docket No. 21*) is DENIED.

Dated this 3<sup>rd</sup> day of August, 2005.

RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

DEZIRET ADAIR,

Plaintiff,

vs.

SAFECO INSURANCE COMPANY,

Defendant.

CV-09-31-BU-RKS

ORDER

In this diversity action Plaintiff seeks damages for alleged breach of contract and for violation of the Montana Unfair Trade Practices insurance statute in connection with an uninsured motorist claim.

The matter is set for trial to a jury beginning September 28, 2010. The parties appeared for oral

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argument on the pending motions in limine (C.D. 71, 74) on August 26, 2010. The Court made preliminary rulings on each pending motion on the record. After the hearing, counsel and the court met in chambers to discuss another issue. The parties, through counsel, jointly asked for a pretrial ruling on a question of law. The court agreed to consider doing so and granted the parties the time they requested, through Friday, August 27, 2010, to simultaneously submit additional authorities in support of their position. Both parties have informally submitted those authorities. After reviewing the record to see whether the court can determine the question presented, the court is prepared to rule.

The question presented requires interpretation of Montana insurance and contract law. The parties' request for pretrial ruling is deemed a motion in limine; those standards are applied. Luce v. U.S. 469 U.S. 38, 41. The issue is whether evidence that Safeco demanded a release upon tendering payment of uninsured motorist policy benefits in full is admissible. Stated another way, the question is:

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Assuming Safeco had otherwise met its duties under Ridley v. Guarantee Nat. Ins. Co., 286 Mont. 325, 951 P. 2d 987 (Mont. 1997), did Safeco breach its contract of insurance with Ms. Adair or violate Montana's insurance Unfair Trade Practices statute, MCA §33-18-201, by seeking a release of all of Safeco's liability to Ms. Adair upon tendering payment of Safeco's uninsured motorist limits in full?

Answering this legal question does not dispose of all remaining issues in the lawsuit. Guidance on this issue will help the parties and the court prepare for trial. The answer on the record before the Court is that Montana law and the insurance contract allow Safeco to seek a release under its uninsured motorist coverage if Safeco has satisfied all its obligations under that coverage.

The parties are familiar with the facts. Ms. Adair was insured and entitled to uninsured motorist coverage up to a limit of \$25,000 under her mother's automobile liability insurance policy X5284929 with Safeco when Ms. Adair was injured in a motorcycle accident June 2, 2007. Ms. Adair was a passenger, the driver was uninsured, the uninsured motorist coverage applied. On November 27, 2007, Safeco agreed to pay the entire uninsured motorist limits but sent with the offer a

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release. Safeco required Ms. Adair to sign the release as a condition of settlement. C.D. 69-8, p.1. The proposed release, (as is pertinent to this question) included language

" . . . I release said insurer from all obligation arising under the above policy to pay damages of the kind indicated above which I am legally entitled to recover from the owner or operator of each uninsured or underinsured motor vehicle involved in the accident. . . "  
C.D. 69-8, p.2.

Ms. Adair declined to sign a release with this language.

To apply the Montana decisions on this issue it is first useful to narrow discussion to the issues these facts raise. There is no dispute that Safeco fulfilled its advance-pay obligations under Ridley v. Guarantee Nat. Ins. Co., 951 P. 2d 989. See, C.D. 82, p.3. This case involves a dispute between Safeco and its insured - a first-party case - rather than a dispute between the insurance carrier for an alleged third party tortfeasor and an allegedly injured plaintiff - a third-party case. The authority both parties cite here discusses an insurer's right to demand a release for its own insured under Ridley as a condition for making

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advance payment of expenses to the third-party claimant. See, for example Shilhanek v. D-2 Trucking, Inc., 2003 MT 122, 70 P.3d 721 (analyzing Montana law in detail) (insurer must pay undisputed medical expenses of third party claimant, to the limits of its coverage, without a release); Etter v. Safeco Ins. Co. of Illinois, 192 F. Supp. 2d 1071, 1075 (D. Mont. 2002) (despite insured's demand not to do so and insured's denial of liability, insurer must advance pay expenses) ("... The issue in this case is not whether Safeco could require a release of its insured as a condition of paying the policy limits. . .").

Here Ms. Adair concedes that Safeco did not violate Ridley (C.D. 82, p.3) and that Safeco was offering to completely satisfy its coverage to Ms. Adair to pay up to the limits of its uninsured motorist payment obligation. Safeco was not seeking to secure the release of anyone other than itself. C.D. 69-10, p. 1-3. Safeco sought the release after having agreed to pay the entire \$25,000 it owed under the coverage. Of that \$25,000 payment, \$5,5881 represented payment for medical expenses and lost wages leaving over \$19,000 to

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compensate Ms. Adiar for her general damages. The facts that provide the setting for the parties' legal question do not raise the issues that faced the court in Shilhanek or Etter.

Absent any statute or case law specifically applicable to this situation, Montana contract law controls. A valid tender of full performance extinguishes the obligation and thus entitles the tendering party to a release. See §28-1-201, 202 MCA; §28-1-1601, 1602 MCA; Audit Services v. Frontier West, Inc., 252 Mont. 142, 150; 827 P.2d 1242, 1247-8 (Montana, 1992) (discussing effect of unconditional offer to perform contract obligation). Requiring a valid release from a minor plaintiff after a tender of full performance does not violate Montana law. A conservatorship approval did not breach the insurance contract or violate Montana law. C.D 43, P. 2; C.D. 63, p. 15; 72-5-401 et. seq., MCA; §72-5-409, MCA.

The facts here and the authorities discussed above make the question simpler: may an insurer require a release from its insured of its liability on a particular coverage as a condition of timely, final

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payment in full for that coverage? On this record, Safeco is entitled to an order in limine precluding testimony or argument that seeking a release under these circumstances violated Montana law or the contract. If somehow the jury heard such evidence or argument, Safeco would be entitled to a jury instruction that its repeated requests for a release of its policy obligations upon full payment of the uninsured motorist coverage policy limits did not breach its contract of insurance or violate its obligations to Ms. Adair under §33-18-201, MCA.

DATED this 31st day of August, 2010.

/s/ Keith Strong  
Keith Strong  
United States Magistrate Judge

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GENERAL RELEASE

**RELEASOR:** Annie Louise Holmes King, P.R. for the Estate of Timothy W. King, its heirs, executors, personal representatives, successors, and assigns.

**RELEASEE:** GEICO Indemnity Company, and in addition, its officers, directors, subsidiaries, parent companies, attorneys, employees and agents.

**DATE OF CASUALTY:** August 27, 2011.

**DESCRIPTION OF CASUALTY:** Three vehicle collision on U.S. Highway 310 in Carbon County, Montana. Timothy W. King sustained fatal injuries for which Releasor seeks Underinsured Motorist benefits under Policy No. 4163-66-55-67 issued by GEICO Indemnity Company ("the Policy").

**SUM OF SETTLEMENT:** One-Hundred Thousand Dollars and No/100ths (\$100,000.00), which represents a single per person stacked UIM limit under the Policy.

1. Release

The undersigned Releasor acknowledges receipt of the above sum of money, and in consideration for payment of such sum, fully and forever releases and discharges Releasee, Releasee's, successors, assigns, agents, partners, employees, and attorneys from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the described casualty.

2. Partial Release

This Release is partial and applies only to one stacked underinsured motorist coverage limit as set forth in the Policy. Annie Louise Holmes King specifically reserves unto herself any other claim for own bodily injury, and such claim is not released under the terms of this document.

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3. Future Damages

Inasmuch as the injuries, damages, and losses resulting from the events described herein may not be fully known and may be more numerous or more serious than it is now understood or expected, the Releasor agrees, as a further consideration of this agreement, that this Release applies to any and all injuries, damages and losses resulting from the casualty described herein, even though now unanticipated, unexpected and unknown, as well as any and all injuries, damages and losses which have already developed and which are now known or anticipated.

4. Apportionment of Payment to Lienholders

This payment shall be apportioned by Releasor among doctors, hospitals, all other health care providers and services, and any other individuals, companies, agencies, workers' compensation insurers or agencies, political subdivisions, or attorneys who may have valid liens or rights of subrogation or reimbursement, and Releasor agrees to indemnify Releasee from and against all such claims by such parties, including payment of attorney's fees and costs.

5. Disclaimer

Releasors has carefully read the foregoing, discussed its legal effect with her attorney, understands the contents thereof, and signs the same of her own free will and accord.

This Release shall be binding upon Releasor's heirs, successors, personal representatives and assigns.

DATED this \_\_\_\_ day of April, 2012.

CAUTION: READ BEFORE SIGNING!

RELEASOR:

\_\_\_\_\_  
ANNIE LOUISE HOLMES KING, AS THE PERSONAL  
REPRESENTATIVE OF THE ESTATE OF TIMOTHY  
W. KING

PROTECTED DOCUMENTS

STATE OF MONTANA           )  
  : ss.  
County of Yellowstone        )

On this \_\_\_\_ day of April, 2012, before me, a notary public of the State of Montana, personally appeared ANNIE LOUISE HOLMES KING, known to me to be the person named in the foregoing Release, and acknowledged to me that she executed the same as her free act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

(S E A L)

\_\_\_\_\_  
NOTARY PUBLIC, State of Montana  
Printed Name: \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

PROTECTED DOCUMENTS



Bohyer, Erickson,  
Beaudette, & Tranel, P.C.

John E. Bohyer  
Jesse B. Beaudette  
Erin M. Erickson  
Nathan A. Fluter  
Wilton H. Strickland  
Paul N. Tranel  
Robin M. Turner

\*Also admitted in Florida  
\*Also admitted in Oregon

June 25, 2012

***Via Certified Mail — Return Receipt Requested***

Annie Louise King  
720 Revolution Ave.  
Billings, MT 59101

Re: *Geico adv. King*  
BEBT File No. 6730


Dear Ms. King:

I sent you correspondence on April 20, 2012 which enclosed several items including a release prepared for your signature, and a settlement check for \$100,000.00. I also sent you a follow-up letter on June 5, 2012 in the hopes of finally resolving this matter.

To date, I have not received the signed release nor have you cashed the check. I have not received any communication from you regarding your intentions in this matter. Will you please call this office at your earliest convenience to discuss this matter. Thank you.

Sincerely,

BOHYER, ERICKSON,  
BEAUDETTE & TRANEL, P.C.

  
Nathan A. Fluter

NAF/dlp  
Enclosure

EXHIBIT

502

1:12-CV-92-RWA

Phone 408.632.7800  
Fax 408.619.2253

268 West Front, Suite 201  
Missoula, MT 59802

PO Box 7729  
Missoula, MT 59807

www.bebtlaw.com  
mail@bebtllaw.com

D 000146

**PROTECTED DOCUMENTS**

**Sentry Insurance**  
P.O. Box 8039  
Stevens Point, WI 54481

**January 30, 2012**



**GEICO**  
**ATTN: JANINE 0372130260105015**  
**PO BOX 509119**  
**SAN DIEGO CA 92150-9119**

**Claim Number:** 92A231512-503  
**Insured:** JANICE MOSICH  
**Vehicle:** 2003 HONDA GOLDWING  
**Date of Loss:** 08/27/2011

After completing our investigation, Patriot General Insurance Company has determined there was no coverage for Janice Mosich on August 27, 2011. Therefore, we are unable to offer coverage for this loss and respectfully deny your claim.

**If you have additional information or wish to discuss this matter, please call.**

Jessa Kilian

**Teresa Kilian, Claims Rep Senior**  
**Patriot General Insurance Company**  
 A Member of the Sentry Insurance Group  
 800-547-7830 ext. 5664237 or 503-566-4237  
 888-729-2225 Fax  
 Teresa.Kilian@sentry.com

1 00001 0000167 12020 0 41

120120113120.7731

**92A231512-503**

## PROTECTED DOCUMENTS

| Pol: 4163665567 ||| DOL: 08/27/2011 | Insured: Timothy Wayne King || Risk State: Montana || Loss State: Montana |||  
 Status: Open | Adj: Jenny Pautler | PIP Adjuster:

Authoring Date	Body	Topic	Related To	Legal Action	Author
10/14/2011 02:54 PM	own insurance 'Collision (2002 HONDA) Exposure Transferred from SHAUN DIXON to IOANA SQUIRES. IP: Timothy King; IP Role: Insured, Injured Party, Owner, Driver, Related Contact Reserve Line(s): Collision User: Lawrence Knight(U23M45) Exposure/Reserve line owner: IOANA SQUIRES	Payments/Reserving			
10/14/2011 03:18 PM	Document(s) Faxed to Progressive at 406-587-6085; by SHAUN DIXON U23078.	Correspondence			
10/14/2011 03:20 PM	Adverse Carrier/Progressive was updated for IP Steven McClamey	Interested Parties	Steven McClamey		
10/14/2011 03:20 PM	rcf a/c progressive (steve mccmurray carrier) updated his etc info in file adv claim reassigned adv situation adv need to know if they are extending any cvg he will begin cvg investigation adv per ok to share p/r sent p/r as copy by fax	Communication			
10/14/2011 04:28 PM	located farmers claim online for climnt bangardt's vehicle obo and spoke with adj MARK STEVENS (406) 370-2537 he is in the filed, did not have the claim in front of him, but was familiar with it adv i called to see if they know anything about coverage for the a/f veh- he ssid not much, they are treating it as um claim for his insrds b/c their atty faxed over a letter denying coverage for the loss- he does not know the specifics of that letter, but will share a copy with us farmers does not have p/r- adv i can share- his fax # is 406-728-8817 (the full copy we have came from insrd and has a post-it stamp with her information on it- i blacked that out b/f faxing it to farmers)	Communication	Farmers		
10/14/2011 04:44 PM	Adverse Carrier/AP-Farmers was updated for IP Vicki	Interested Parties	Farmers		

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 Status: Open | Adj: Jenny Pautler | PIP Adjuster:

Authoring Date	Body	Topic	Related To	Legal Action	Author
10/14/2011 04:44 PM	Bangart Adverse Carrier/Farmers was updated for IP Vicki Bangart	Interested Parties	Vicki Bangart		
10/14/2011 04:44 PM	AP Farmers/Adverse Carrier, for IP(s) Vicki Bangart has been automatically synched with ContactCenter. The elements updated are WorkPhone.	Interested Parties	Farmers		
10/14/2011 04:51 PM	obc to annie king- spoke with her adv new adj and my ctc info adv um and ulm cov on the pol- trying to confirm if there was any cov for clmnt which would mean a ulm claim for her , or no cov, which would mean um- she u/s and was aware of that she said she's not confident that the driver has any insurance of his own- he has not ben cooperative with the police officers that are trying to determine that information as well. she said he is nto in jail, but assumes criminal charges will be forthcoming soon. adv as claims were just reported to the a/c we know of, will f/u with them in a few weeks for the outcome of their coverage investigations and we will keep eachother informed. no other ?'s for now	Communication	Annie King		
10/14/2011 05:00 PM	lso search- only one match by name and dob for paul moe- w/c claim from may 2011 obc to 406-425-2798 lvmtcb for "paul moe with yellowstone bean" adv calling to see if he had his own auto insurance on dol address in lso is different than what we have on file sent letter asking the same ? to address on file and po box 114 bridger, mt 59014	General	Paul Moe		
10/14/2011 05:03 PM	The following fields were updated for IP Paul Moe:(Date of Birth, SSN/TaxID, Cell Phone)	Notes/History	Paul Moe		
10/14/2011 05:03 PM	Information was added for IP Paul Moe that includes:	Interested Parties	Paul Moe		

User: Jenny Pautler

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07/06/2012 06:32 PM

D 000257  
 Exhibit 503, Page 255



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 Status: Open | Adj: Jenny Pautler | PIP Adjuster:

Authoring Date	Body	Topic	Related To	Legal Action	Author
11/10/2011 11:27 AM	4 Pages. 'UM BI' Exposure Transferred from IOANA SQUIRES to Janae Estill. IP: Timothy King; IP Role: Driver, Owner, Injured Party, Insured, Related Contact Reserve Line(s): No Coverage-UMBI/UMBI User: Jose Castillo(U09P61) Exposure/Reserve line owner: Janae Estill	Payments/Reserving			
11/10/2011 11:27 AM	'Collision (2002 HONDA) Exposure Transferred from IOANA SQUIRES to Janae Estill. IP: Timothy King; IP Role: Driver, Owner, Injured Party, Insured, Related Contact Reserve Line(s): Collision User: Jose Castillo(U09P61) Exposure/Reserve line owner: Janae Estill	Payments/Reserving			
11/10/2011 11:28 AM	mass transfer--tip exempt	Supervisor	Timothy King		
11/10/2011 04:13 PM	TITLE AND CERTIFIED COPY OF DEATH CERTIFICATE MAILED TO MACON SALV DEPT.	Property Damage	Timothy King		
11/14/2011 09:36 AM	Total Loss Paperwork 11/14/2011 added, Document ID 1273188686, Batch Number CM5_00013_11142011, and 4 Pages.	Correspondence			
11/15/2011 08:25 PM	Rec tti and death cert, sending docs to pool to transfer and hold tti until unit is released for processing	Property Damage	Timothy King		
11/16/2011 02:09 PM	obc to 406-425-2798 lvm tcb for "paul moe with yellowstone bean" adv calling to see if he had his own auto insurance on dol	Communication	Paul Moe		
11/16/2011 02:11 PM	o/b ctc to Patriot Gen Ins co a/c for Janice Mosich 253.537.4000 pol > 475867825 claim > 92a231512 ph# > 800.547.7830 James Nichols x 5664226 lvm tcb -status of their covg investigation?	Communication	Paul Moe		
11/16/2011 02:15 PM	obc to employer yellowbean co (406) 662-3622 s/w Wanda she advised he wasn't employed w/ them at	Communication	Paul Moe		

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Authoring Date	Body	Topic	Related To	Legal Action	Author
11/22/2011 04:20 PM	<p>the time of the ax last day was June 29th she doesn't have any new contact info to reach him</p> <p>*****elvg**** lbc frm niki johnson w/ lsa ...wanted to know what was going on ..advsd to process tti work only due to car is hold at police impound ..advsd will set up a move once vehicle is release ...niki advsd to reference stkl# 8994810 for the tti work only..she advsd to place this stk number in notes ..so that it will remind her she has the ppw already ..all vts Emailed From: ALICIA WALKER Emailed To: ECALLAHAN@GEICO.COM; 11/22/2011 04:23 PM</p>	Property Damage	Timothy King		
11/25/2011 04:40 AM	<p>AP Mike Manweiler/Towing Agency, for IP(s) Timothy King has been automatically synched with ContactCenter. The elements updated are .</p>	Interested Parties	Mike Manweiler		

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 Status: Open | Adj: Jenny Pautler | PIP Adjuster:

Authoring Date	Body	Topic	Related To	Legal Action	Author
01/30/2012 04:42 PM	correction - title paperwork was sent to pool for title processing 11/18	Supervisor	Timothy King		
01/31/2012 09:20 AM	ack hold file for insd lp 01 king	Property Damage	Timothy King		
02/01/2012 01:28 PM	Lets discuss this one, I see that Kemper denied and now Farmers may be the tort carrier. The actual issue is if this is going to be UM or UIM. Add it to the calendar for us to discuss. Emailed From: Christopher Teves Emailed To: JEstill@gelco.com; 02/01/2012 01:30 PM	Supervisor	Timothy King		
02/01/2012 01:41 PM	Stacking Review Completed By Christopher Teves Exposure Coverage : UM BI Interested Party: Timothy King Decision : Approved Comments : UW confirms two vehicles listed on policy on DOL.	Coverage Notes/History Stacking			
02/01/2012 03:12 PM	recvd call from patriot gen s/w james's teammate she sttd they did deny covg, she will send over ltr	Communication	Patriot General Insurance		
02/01/2012 03:22 PM	Chris, I'm more than happy to discuss but wanted to make sure it was clear, in this case farmers is the insurance company for the other innocent party involved in this loss. We have now recvd two denials from 3 possible sources of insurance for the tort driver (tort veh owner steve-kemper denied, veh owner steve also had a NNO pol w/ patriot gen ins, they have also denied) lastly we've been unsuccessful on reaching the actual tort driver paul moe to see if he has other insurance for us to consider. I agree our question will this be a UM or UIM exposure, however given the information to date, this appears to be going down the UM route. I've sent another letter to Paul Moe today just to again try to roll out any chance of him having his	Coverage	Timothy King		